



**UNITED STATES DEPARTMENT OF JUSTICE
Drug Enforcement Administration**

**[Docket No. 17-31]
Jennifer L. St. Croix, M.D.
Order Denying Motion to Stay**

I. Introduction

On April 12, 2021, I issued a Decision and Order revoking, effective May 12, 2021, Certificate of Registration No. FS2669868 issued to Jennifer L. St. Croix, M.D. (hereinafter, Petitioner) at a registered address in Tennessee. *Jennifer L. St. Croix, M.D.*, 86 Fed. Reg. 19,010 (April 12, 2021) (hereinafter, April 12, 2021 Decision/Order). On May 6, 2021, Petitioner's Counsel filed by e-mail with the Drug Enforcement Administration Office of the Administrative Law Judges (hereinafter, OALJ) a Motion to Stay Enforcement Pending Appeal (hereinafter, Motion to Stay) and served by e-mail the Drug Enforcement Administration Office of Chief Counsel (hereinafter, DEA or Government). The OALJ forwarded the Motion to Stay to my office. On May 7, 2021, I ordered the Government to respond to Petitioner's Motion to Stay no later than 5:00 p.m. on Monday, May 10, 2021. The Government filed a timely response (hereinafter, Govt Opposition), arguing that the Motion to Stay should be denied.

Later in the day of May 7, 2021, the United States Department of Justice alerted my office that Petitioner had filed a *pro se* petition with the District of Columbia Circuit Court of Appeals for review of my April 12, 2021 Decision/Order. Petition for Review of Agency Decision, *St. Croix v. United States Drug Enforcement Administration*, 21-1116 (dated May 5, 2021) (hereinafter, Review Petition). Petitioner identified her address on her Review Petition to be in Las Vegas, Nevada. Review Petition, at 1.

Having considered the merits of Petitioner's Motion to Stay and of the Government's Response in conjunction with the record evidence, I deny Petitioner's Motion to Stay.

II. The April 12, 2021 Decision/Order

Petitioner requested a hearing on the allegations that the Order to Show Cause (hereinafter, OSC) made against her. 86 Fed. Reg. at 19,011. She attended the hearing with her attorney. *Id.* at 19,018. After the Government rested, Petitioner's counsel made a motion for summary disposition. *Id.* at 19,017-18. After the Chief Administrative Law Judge (hereinafter, ALJ) heard from both the Petitioner's and the Government's counsels on the motion, he ruled on the motion from the bench, denying it in part and reserving it in part. *Id.* Petitioner then advised the Chief ALJ that she chose not to present a case. *Id.* at 19,018. Following discussion about that decision, Petitioner sought and obtained from the Chief ALJ time to consult with her attorney. *Id.* After the opportunity to consult, Petitioner re-stated her decision not to put on a case. *Id.* Accordingly, Petitioner knowingly declined the opportunity to offer documentary evidence and oral testimony for the record.

In my April 12, 2021 Decision/Order, I found that Petitioner "had committed such acts as would render . . . [her] registration inconsistent with the public interest." 21 U.S.C. § 824(a)(4). The acts alleged in the OSC for which I found the Government had submitted substantial evidentiary support for the record and had proven were legal violations were (1) that Petitioner issued controlled substance prescriptions for no legitimate purpose and outside the usual course of professional practice, (2) that Petitioner failed to maintain medical records pertaining to her prescribing of controlled substances, (3) that Petitioner provided misleading information to investigating DEA agents, (4) that Petitioner failed to provide fully-compliant controlled substance prescription drug logs to DEA for periods during which she issued controlled substance prescriptions, (5) that Petitioner stored controlled substances at an unregistered location, and (6) that Petitioner failed to provide effective controls or procedures to guard against the theft or diversion of controlled substances. 86 Fed. Reg. at 19,019-21, 19,023-25. I did not find substantial evidence and/or a legal basis to support the OSC's allegations (1) that Petitioner had continued to issue controlled substance prescriptions to individuals who are intimate or close acquaintances, and to an individual with whom she had a "romantic interaction," (2) that

Petitioner violated 21 U.S.C. § 843(a)(4)(A) by failing to comply with the terms of her June 2011 Memorandum of Agreement (hereinafter, MOA) with DEA, (3) that Petitioner did not maintain records of the controlled substances she dispensed, and (4) that Petitioner did not conduct an initial inventory of the controlled substances she received. *Id.* at 19,019-20, 19,022-25.

In adjudicating the OSC issued to Petitioner, I found that Petitioner made legal arguments that conflict with a core principle of the Controlled Substances Act (hereinafter, CSA)—the establishment of a closed regulatory system devised to “prevent the diversion of drugs from legitimate to illicit channels.” *Gonzales v. Raich*, 545 U.S. 1, 13-14, 27 (2005). I found that Petitioner proposed a course of action regarding the storage of controlled substances that would be a danger to public health and safety as it would allow the storage of controlled substances anywhere, as long as no dispensing took place at the location. 86 Fed. Reg. at 19,024. I declined to accept Petitioner’s arguments, concluding that to do so would conflict with my authority under the CSA and would establish a dangerous policy. *Id.*

In my adjudication of the OSC issued to Petitioner, I also determined that Petitioner urged me to accept positions that minimize statutory and regulatory inventory requirements. *Id.* I rejected those positions as well.

III. Petitioner’s Motion to Stay

Petitioner argues that there are multiple reasons why her Motion to Stay satisfies the applicable legal standard and why I should grant her requested relief. First, she argues that there is a substantial likelihood that her review petition will prevail because she has had “no further issues regarding her prescribing and management of controlled substances . . . over the past seven years.” Motion to Stay, at 3. Petitioner also argues that the reviewing Circuit Court will find in her favor because the penalty I assessed in my April 12, 2021 Decision/Order “is

excessive, unjust, and disproportionate to her actions” based on her “review of other administrative actions against physicians.” *Id.* at 4.

Second, Petitioner posits that she will suffer irreparable injury if enforcement of my April 12, 2021 Decision/Order is not stayed. “It would be difficult,” the Motion to Stay argues, “to overstate the impact that the loss of her [DEA registration] would have on . . . [her] ability to earn a living.” *Id.* She states that enforcement of my April 12, 2021 Decision/Order “will result in the immediate loss of her current position and essentially make her unemployable as a physician.” *Id.* She also states that she “will not be able to recover her lost income that will result from her sudden unemployment” and that a stay of enforcement “would allow . . . [her] to continue to support herself while she explores other employment opportunities.” *Id.* at 5.

Third, Petitioner argues that no party “will be harmed if the enforcement of the . . . [April 12, 2021 Decision/Order] is stayed.” *Id.* In support of this argument, Petitioner states that the enforcement proceeding never “alleged that any action or omission by . . . [her] resulted in harm to any person,” and that DEA “did not apparently see . . . [her] as posing any kind of imminent threat or danger to her . . . patients, as it never sought any sort of injunction or immediate suspension of her certificate.” *Id.* She also argues that “no parties have been harmed in the past and there is no likelihood that any parties would be harmed if a stay of enforcement is granted.” *Id.* at 6.

Fourth, Petitioner states in her Motion to Stay that the “public interest is in allowing an experienced practitioner to keep practicing in a medical specialty that is urgently needed during a global pandemic.”¹ *Id.* at 6. Petitioner indicates that she would like “to at least give proper notice to her employer and allow sufficient time to try and find a suitable employment.” *Id.* Petitioner’s definition of “proper notice” appears to be connected to “at least until this action has been finally concluded.” *Id.* at 7. Petitioner also claims that, “as she is a woman of Asian

¹ According to the Motion to Stay, Petitioner is “actively engaged in the care and treatment of individuals in desperate need of medical care, and . . . does not pose any immediate danger to the community.” Motion to Stay, at 6.

descent, . . . [she] is particularly suited to provide compassionate and understanding treatment to patients who have been the victim of ongoing racial/ethnic prejudices, as she herself has experienced these prejudices herself.” *Id.* at 6.

IV. The Government’s Opposition to the Motion to Stay

As already discussed, the Government opposes Petitioner’s Motion to Stay. *Supra* section I. Regarding whether Petitioner is likely to prevail on appeal, the Government states that the Motion to Stay “assigns no legal or factual errors to the Acting Administrator’s decision.” Govt Opposition, at 3. It argues that Petitioner’s Motion to Stay “points (without analysis or comparison) to a single court of appeals decision finding that the Agency’s decision to revoke a practitioner’s registration was ‘arbitrary.’” *Id.* (citing *Morall v. Drug Enf’t Admin.*, 412 F.3d 165, 181 (D.C. Cir. 2005)). According to the Government, “*Morall* offers . . . [Petitioner] here no relief” because, “as the D.C. Circuit has since reiterated, ‘under the Administrative Procedure Act, the [Agency’s] choice of sanction is entitled to substantial deference.’” Govt Opposition, at 3 (citing *Chien v. Drug Enf’t Admin.*, 533 F.3d 828, 835 (D.C. Cir. 2008) (quoting *Morall*, 412 F.3d at 177)). The Government’s Opposition states that an “Agency’s sanction decision is ‘arbitrary’ only if it is a ‘flagrant departure from DEA policy and practice . . . *and* if the departure is not only unexplained, but entirely unrecognized in the [Agency’s] decision.” Govt Opposition, at 3-4 (citing *Chien*, 533 F.3d at 836 (quoting *Morall*, 412 F.3d at 183) (emphasis added by the Government)). The Government concludes that Petitioner has not shown that the April 12, 2021 Decision/Order was “arbitrary” and that she “‘has not established a serious question going to the merits of [her] appeal, much less a substantial likelihood of success on the merits of [her] petition for review to warrant the issuance of a stay.’” Govt Opposition, at 3, 5 (quoting *Medicine Shoppe-Jonesborough*, Motion to Stay Denial, 73 Fed. Reg. 3,997, 3,998 (2008)).

Regarding whether Petitioner’s Motion to Stay demonstrates irreparable harm, the Government argues that it does not, because it “offers no evidence in support” of its claims that

revocation “would ‘result in the immediate loss of her current position and essentially make her unemployable as a physician.’” Govt Opposition, at 5 (citing *Medicine Shoppe-Jonesborough*, 73 Fed. Reg. at 3,998). The Government concludes that Petitioner’s allegations of harm are “entirely speculative and, as importantly, unsubstantiated.” Govt Opposition, at 6.

V. The Applicable Legal Standard

The Supreme Court has addressed the purpose of stays and the legal standard for the evaluation of motions to stay. In *Scripps-Howard Radio, Inc. v. Fed. Communications Comm’n*, the Supreme Court ruled that “it is reasonable that an appellate court should be able to prevent irreparable injury to the parties or to the public resulting from the premature enforcement of a determination which may later be found to have been wrong . . . [and it] has always been held, therefore, that, as part of its traditional equipment for the administration of justice, a federal court can stay the enforcement of a judgment pending the outcome of an appeal.” 316 U.S. 4, 9-10 (1942).

In 2009, the Supreme Court provided the legal standard applicable to Petitioner’s Motion to Stay. *Nken v. Holder*, 556 U.S. 418 (2009). According to *Nken*, four factors guide a court’s exercise of discretion to stay enforcement of an order pending review, and the party requesting the stay “bears the burden of showing that the circumstances justify an exercise of that discretion.” 556 U.S. at 433-34. The four factors are “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Id.* at 434. According to the Court, the “first two factors of the traditional standard are the most critical.” *Id.* If the applicant satisfies the first two factors, “the traditional stay inquiry calls for assessing the harm to the opposing party and weighing the public interest.” *Id.* at 435. When the Government is the opposing party, these two factors merge. *Id.*

VI. Application of the Legal Standard to Petitioner’s Motion to Stay

Having analyzed the Motion to Stay, the Government’s Opposition, and the entire record in this matter, I find that Petitioner has not met her burden of showing that the circumstances justify an exercise of my discretion to stay, pending appellate review, enforcement of the sanction I ordered on April 12, 2021. *Id.* at 433-34.

Regarding whether there is a substantial likelihood that Petitioner will prevail on the merits, even if Petitioner had substantiated her argument, which she did not, that she has had “no further issues regarding her prescribing and management of controlled substances” for the last seven years, her argument is irrelevant to my adjudication of the OSC and to the Circuit Court’s review of my Decision/Order.² The OSC at issue, dated April 12, 2017, and the adjudication of that OSC concern Petitioner’s unlawful and allegedly unlawful acts during a specified period before April 12, 2017. As such, Petitioner’s argument that she has had “no further issues regarding her prescribing and management of controlled substances” since the date of the OSC is of no relevance.

For the portion of the alleged seven-year period that is before the date of the OSC, I note that neither this Agency nor any other federal law enforcement agency is required to bring all possible charges against any subject at one time. *See, e.g., Heckler v. Chaney*, 470 U.S. 821, 831 (1985) (“This Court has recognized on several occasions over many years that an agency’s decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency’s absolute discretion.”). Instead, agencies exercise their investigative and prosecutorial discretion based on matters such as enforcement priorities and the availability of resources. *See, e.g., id.* at 831-32.

Further, Petitioner has had, and continues to have, the option of submitting an application for a new DEA registration. The Agency’s decisions make clear that an applicant’s past actions

² Petitioner likely referenced “seven” years because the record evidence includes a three-year MOA between Petitioner and DEA dated June 2011. DEA issued her the Tennessee-based registration, whose revocation is effective tomorrow, because she agreed to the MOA’s terms.

that violate the law need not result in her being denied a DEA registration indefinitely. *See, e.g., Michele L. Martinho, M.D.*, 86 Fed. Reg. 24,012 (2021).

Regarding her allegation that the sanction I assessed in my April 12, 2021 Decision/Order is “excessive, unjust, and disproportionate to her actions,” Petitioner neither submitted evidence for the record during the hearing on the OSC nor now submits evidence that substantiates it. My April 21, 2021 Decision/Order, however, explains how violations that I found Petitioner had committed go to the heart of the CSA and its implementing regulations, and rejects her arguments that minimize applicable legal requirements. *See, e.g.*, 86 Fed. Reg. at 19,024. Accordingly, I do not find persuasive Petitioner’s arguments that there is a substantial likelihood that she will prevail on the merits upon appellate review, and I reject them.

Petitioner’s irreparable injury arguments are predictions that she does not tether to existing or new record evidence. For example, as already discussed, Petitioner provides an address for herself in Las Vegas, Nevada in the *pro se* review petition she recently filed in the District of Columbia Circuit. *Supra* n.1. There is no record evidence, and she submitted no new evidence along with this or her Review Petition filing, that Petitioner is registered in Nevada or even that she is licensed to practice medicine in Nevada. Petitioner’s irreparable injury arguments related to any future loss by her of earned income, therefore, are without a sufficient basis in record evidence. Accordingly, I reject them.

Further, Petitioner’s loss of earned income claims are of a generic nature that any practitioner whose registration had been revoked or suspended could make. Even if Petitioner had submitted record evidence substantiating these predictions, the CSA does not direct me to consider her loss of earned income or potential loss of earned income. Accordingly, I do not accept Petitioner’s irreparable injury arguments.

Nken makes clear that the “first two factors of the traditional standard are the most critical.” 556 U.S. at 434. It also explains that, if the applicant satisfies the first two factors, “the traditional stay inquiry calls for assessing the harm to the opposing party and weighing the public

interest.” *Id.* at 435. Here, Petitioner has not satisfied either of the first two factors. Supreme Court case law makes clear that I need not address Petitioner’s arguments regarding the third and fourth stay factors. *Id.* For the sake of having a complete record, however, I shall do so.

Assuming, *arguendo*, the accuracy of Petitioner’s arguments that she has never been accused of harming a person, and of her suggestion that the third factor addresses such harm, I find that the legal violations I sustained in my April 12, 2021 Decision/Order do not include harm to a person among their elements. Accordingly, I find Petitioner’s third factor arguments to be irrelevant, and I reject them.

Fourth, even if the record evidence substantiates Petitioner’s public interest claims, which it does not, the Agency has rejected community impact arguments. *See, e.g., Perry County Food & Drug*, 80 Fed. Reg. 70,084 (2015). Accordingly, I reject Petitioner’s public interest arguments.

Having determined that Petitioner has not met her burden of showing that the circumstances justify an exercise of my discretion to stay enforcement of the sanction I ordered on April 12, 2021, pending appellate review, I deny her Motion to Stay.

It is so ordered.

Date: May 11, 2021.

D. Christopher Evans,
Acting Administrator.

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